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Charlie Daniels  
Secretary of State  
State Capitol, Room 026  
Little Rock, AR 72201-1094

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The *Arkansas Register* is an official publication of the State of Arkansas. It contains administrative rules and regulations adopted by state agencies, boards and commissions pursuant to Act 434 of 1967, as amended. The *Arkansas Register* also includes Attorney General opinions, notice of legislative audit reports and insurance orders. The subscription rate is $40 per year or $3.50 a copy, distributed monthly, postpaid within the United States.
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Secretary of State’s office
Arkansas Register
026 State Capitol
Little Rock, AR 72201
(501) 682-3527
jon.davidson@sos.arkansas.gov
Opinion No.: 2005-083

Higginbothom, Steve  
State Senator

RE: In light of the recent consolidation of the cities of Helena and West Helena, will the newly consolidated city be able to keep two district judges now in place in each city or will it be reduced to one? Q2) If it is reduced to one, which one will remain in place? ANSWER: The two district judgeships remain in place, rendering the second question moot. See A.C.A. 16-17-917 (establishing the Phillips County District Court with two departments) and 16-17-901 (defining “department” as the physical location where sessions of court are held).

Opinion No.: 2005-087

Broadway, Shane  
State Senator

RE: May an Arkansas city of the first class lawfully adopt an ordinance and enter a contract with a private corporation for the collection of user fees from insurance companies for the delivery of fire and police department services? RESPONSE: In all likelihood “no.” See opinion for full analysis.

Opinion No.: 2005-093

Davis, Brent  
Pros Att’y, 2nd Judicial Circuit

RE: Does the emergency clause set forth in section 2 of Act 1151 (the Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act) set forth facts which establish a current emergency so as to make such clause valid? Q2) Is it a violation of the Arkansas Constitution and/or an impermissible delegation of legislative authority, to grant the power to choose within which political subdivision, i.e., city, town or county, the election is to be held, to the sole discretion of the “franchise holder,” as is set forth in ACA 23-113-201(a)(2)? ANSWER: Q1) The emergency clause failed to pass. Q2) No. When 23-113-201 is placed in context and the act is considered as a whole, the presumption of constitutionality prevails. See Opinion for discussion.

Opinion No.: 2005-099

Laverty, Randy  
State Senator

RE: Are there any state laws or state agency regulations that govern the management or mismanagement of non-real estate escrow accounts? RESPONSE: I am unable to determine the nature of the escrow account from the information that has been provided to me. While I have not found any applicable regulations or laws governing the administration of an escrow account of the type you describe, I do note that the contract creating the escrow account is subject to the general law of contract, and a private attorney may be able to advise your constituent on the proper course of action.

Opinion No.: 2005-102

George, Nathan V.  
State Representative

RE: Q1) Is it permissible to erect a [publicly funded] Civil War monument on private land? Q2) How far off the highway is the right of way? RESPONSE: With respect to your first question, I am unable to opine on whether public funds may be permissibly expended to erect a Civil War monument because such a determination will require a factual analysis of the attendant circumstances for which this office is neither authorized nor equipped. With respect to your second question, right of way distances are determined on a case by case basis and I recommend contacting the Arkansas Highway and Transportation Department Right of Way Division regarding the specific portion of the highway at issue.
Opinion No.: 2005-105

Broadway, Shane
State Senator

RE:Pursuant to provisions of Act 2133 of 2005, does the union or professional association have to be recognized by the municipality as representing the employee for benefit or wage negotiations, or does a municipality have to deduct membership fees of any and all professional associations that an employee might want to belong to and subsequently have their membership fees withheld from their salary? RESPONSE: In my opinion, a municipality must deduct the membership dues for any union or professional association of which a full-time municipal employee is a member if the employee has in writing requested the municipality to withhold the membership dues from his or her paycheck.

Opinion No.: 2005-106

Nisbet, A. Wyckcliff
Friday Eldredge & Clark

RE:Request for approval of an amendment to the interlocal cooperation agreement between the cities of Little Rock and North Little Rock, Pulaski County, Central Arkansas Water, Little Rock Wastewater and NLR Wastewater to establish the Pulaski Area Regional Geographic Information System ("Pagis"). RESPONSE: My review indicates that the agreement is in proper form and compatible with the laws of this state, and is approved.

Opinion No.: 2005-115

Laverty, Randy
State Senator

RE:In light of the provisions of Act 1452 of 2005, as codified at A.C.A. § 6-20-604, can the Department of Education legally continue to send isolated school funds to school districts based on prior-year average daily membership figures even if the school in question has been completely or partly closed? RESPONSE: The answer to this question is “no” if the isolated school has been closed, see A.C.A. 6-20-604(h); “no” for the year in which an isolated school has been partially closed, see id.; and “yes” for any year subsequent to the year in which an isolated school has been partially closed, see A.C.A. 6-20-603(b).

Opinion No.: 2005-118

Norton, James
State Representative

RE:What is the extent and scope of Executive Order 05-04? Q2) What state and federal laws are applicable to economic impact analysis? RESPONSE: With respect to your first question, as I recently opined, the extent and scope of EO 05-04 is to require every agency as defined in the EO to complete an economic impact analysis with respect to small businesses for all rules and regulations promulgated under A.C.A. 25-15-204 (Supp. 2003) after the effective date of the EO. With respect to your second question, I am unable to offer an opinion because of the vague and imprecise nature of your inquiry.

Opinion No.: 2005-122

Jeffress, Jimmy
State Senator

RE:Considering current law and the effective date of Act 1397 of 2005, is it possible for a local school board of directors to close an isolated school or parts thereof prior to August 12, 2005? Q2) If the answer to Q1 is in the affirmative, what type of local board action, if any, is required in order for a school district to be deemed to have “closed” an isolated school or part thereof for purposes of Act 1452? Q3) Can the McGehee School District reutilize the grade 7-12 grade span that was not utilized at the Arkansas City campus during the 2004-05 school year and, thus, be en-
titled to Isolated Funding for students attending those reutilized grade spans for that isolated school?  Q4) For the purpose of Isolated Funding pursuant to A.C.A. 6-20-602 and Act 1452, does the term “average daily membership” include only those students that reside within the isolated school area (i.e., the former Arkansas City School District boundary lines) or does the term also include any students from other areas of the McGehee School District that are assigned to the Arkansas City school campus for any particular grade or special educational program?  Q5) Is the Arkansas City isolated school area entitled to receive Isolated Funding for students attending a special needs program such as an ALE program or is the school only entitled to per student isolated funding for students attending traditional K-12 grades at Arkansas City?  Q6) For purposes of special needs funding pursuant to Act 1452, are school districts required to show full compliance with the Arkansas Standards of Accreditation (see 6-15-202) as required in 6-20-601(b)(3)?

RESPONSE:  Q1) In my opinion, although the law on this question is not entirely clear, see A.C.A. 6-20-602(b) and 6-13-1603(f), the answer to your first question is, in all likelihood, “no.”  Q2) This question is moot in light of my response to your first question. If the McGehee School District reopens grades 7-12 at the Arkansas City campus and continues to meet the criteria for isolated-school status, it will be entitled to include the additional students in average daily membership computations for the purpose of determining isolated school funding. However, it may do so only in the year following the expansion of service. See A.C.A. 6-20-603(b).  Q3) The term “average daily membership” refers to any students formally registered in grades K-12, irrespective of where they reside. See A.C.A. 6-13-1601.  Q5) So long as a student enrolled in a special-needs program is also classified as enrolled in any one of grades K-12, the isolated school area may include that student in average daily membership for purposes of computing both isolated funding and special-needs funding. I consider it immaterial whether the student’s education is characterized as “traditional” or “nontraditional.”  Q6) Yes. See A.C.A. 6-20-601(b)(3) and Act 2005, No. 1452.

Opinion No.:  2005-127
Altes, Denny
State Senator

RE: If the provisions of HJR 1003 were to become effective, would bingo and raffles conducted pursuant to the proposed amendment be legal?  Q2) Would the conduct of such bingo and raffle endeavors still be illegal due to the criminal laws set forth at ACA 5-66-101 through -119?  Q3) Would the Legislature have to amend the existing criminal statutes regarding gambling in order to legalize charitable bingo and raffles?

RESPONSE:  Declined to issue an opinion due to the pending election on the question and the absence of any forum for challenging an advisory opinion on the matter. Reference suggested to Section 1 of the HJR.

Opinion No.:  2005-128
Ormond, Charles L.
State Representative

RE: Request for certification of the popular name and ballot title for a proposed constitutional amendment to create a state commission on lotteries and wagering to operate charitable bingo, lottery games and wagering, and for other purposes.  RESPONSE:  Rejected due to ambiguities in the text of the proposed measure.

Opinion No.:  2005-131
Jessup, Datus
LR City Employee

RE: Is the decision of the custodian of records to release Mr. Jessup’s application with exempt and personal information removed in response to a Freedom of Information Act request consistent with provisions of the FOIA?  RESPONSE:  Yes.
Opinion No.: 2005-140
Borhauer, Shirley
State Representative

RE: Are the attached petition cover sheet and sample petition signature page in proper form according to the provisions of Act 1237 of 2005? RESPONSE: The Attorney General is not invested with the power to approve or certify the sufficiency of such petitions. This duty is entrusted to the county judge. As a state statutory matter, however, it appears that the attached cover sheet and signature page contain the required statutory elements listed in the new act. The formal, completed petition, however, will be subject to the review and independent determination of the county judge.

Opinion No.: 2005-146
Fowler, Bessie
Organizer

RE: Is the decision of the City of Pine Bluff to withhold the home telephone (phone) numbers of all city employees in response to a request under the Freedom of Information Act (FOIA) consistent with provisions of the FOIA? ANSWER: No, because no determination was made regarding the existence of specialized facts supporting the decision not to disclose a listed home phone number.
### ARKANSAS TEACHER RETIREMENT SYSTEM

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**Rule Sections:** (6-1-1-A), (6-2-1), (7-1-1), (7-2-1), (7-3-1), (6-10-1), (7-4-1), (2-2-1), (8-2-1), (8-10-1), (8-14-1), (8-17-1), (9-3-1), (9-5-1), (9-6-1), (10-3-1), (11-5-1), (12-1-1)

### BOARD OF CHIROPRACTIC EXAMINERS

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**Conditions Under Which a Retirant May Return to Covered Service Without Rescinding Retirement (10-2-1)**

### ETHICS COMMISSION

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**Changes to the Rules on Campaign Finance & Disclosure**

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**Changes to Rules on Lobbyist Registration and Reporting**

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**Changes to Rules of Practice and Procedure**

### GAME AND FISH COMMISSION

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**2005 -2006 Early Migratory Season Approvals; 2005 - 2006 Miscellaneous Code Change Approved**
ADOPTED RULES AND REGULATIONS

HEALTH DEPARTMENT
Pharmacy Services

Docket No: 007.07.05-001F
Effective Date: 08/25/2005
Contact: C. C. Frazier, Jr.
Telephone: 501-661-2325

Rules Pertaining to Controlled Substances

Docket No: 007.07.05-002F
Effective Date: 08/25/2005
Contact: C. C. Frazier, Jr.
Telephone: 501-661-2325

List of Controlled Substances

HIGHER EDUCATION
Colleges & Universities
Plans & Operations

Docket No: 008.02.05-001F
Effective Date: 08/19/2005
Contact: Thomas Pennington
Telephone: 479-964-0824

2005-2006 Arkansas Tech University
Parking and Traffic Regulations

Docket No: 008.02.05-002F
Effective Date: 08/25/2005
Contact: David McKinney
Telephone: 870-972-2945

2005 - 2006 Arkansas State University
Parking and Motor Vehicle Regulations

HUMAN SERVICES
Administrative Services

Docket No: 016.14.05-009F
Effective Date: 09/15/2005
Contact: Joe Franklin
Telephone: 501-682-9631

DHS Policy 1100 - Disposal of Surplus Computer Equipment

Children & Family Services

Docket No: 016.15.05-001F
Effective Date: 08/08/2005
Contact: Vellor Williams
Telephone: 501-682-8196

FSPP Manual, CFS-316, CFS-342A, CFS 342B, CFS-344B, CFS-474 and Publications 050 and 357

Medical Services

Docket No: 016.06.05-043F
Effective Date: 09/01/2005
Contact: Dorothy Vance
Telephone: 501-683-2916

Developmental Rehabilitation Services
Update Transmittal #14
INSURANCE DEPARTMENT

Docket No: 054.00.05-001E
Effective Date: 07/28/2005
Contact: Booth Rand
Telephone: 501-371-2820

Emergency Rule 84: Prepaid Funerl Benefits Contracts Recovery Funds Fees

LABOR DEPARTMENT
Labor Standards Division

Docket No: 010.14.05-001E
Effective Date: 08/12/2005
Contact: Susan Miller
Telephone: 501-682-4504

Emergency Rule 2.501 - Child Labor Regulations

LIVESTOCK AND POULTRY COMMISSION

Docket No: 125.00.05-003F
Effective Date: 08/18/2005
Contact: Karen Gray
Telephone: 501-907-2411

Arkansas Tuberculosis Regulations

PHARMACY BOARD

Docket No: 070.00.05-001F
Effective Date: 08/12/2005
Contact: Charles Campbell
Telephone: 501-682-0190

Regulation 04 - General Regulations Regarding Pharmacies

Docket No: 070.00.05-002F
Effective Date: 08/12/2005
Contact: Charles Campbell
Telephone: 501-682-0190

Regulation 05 - Nursing Home Consultants

Docket No: 070.00.05-003F
Effective Date: 08/12/2005
Contact: Charles Campbell
Telephone: 501-682-0190

Regulation 08 - Wholesale Drug Distributors of Legend / Controlled Substances
ADOPTED RULES AND REGULATIONS

SOIL & WATER CONSERVATION COMMISSION

Docket No: 138.00.05-001F
Effective Date: 08/05/2005
Contact Edward Swaim
Telephone: 501-682-3965

Title 19 - Rules Governing the Arkansas Poultry Feeding Operations Registration Program

Docket No: 138.00.05-002F
Effective Date: 08/05/2005
Contact Edward Swaim
Telephone: 501-682-3965

Title 20 - Rules Governing the Arkansas Nutrient Management Planner Certification Program

Docket No: 138.00.05-003F
Effective Date: 08/05/2005
Contact Edward Swaim
Telephone: 501-682-3965

Title 21 - Rules Governing the Arkansas Nutrient Management Applicator Certification Program

Docket No: 138.00.05-004F
Effective Date: 08/05/2005
Contact Edward Swaim
Telephone: 501-682-3965

Title 22 - Rules Governing the Arkansas Soil Nutrient and Poultry Litter Application and Management Program
05-015A
Consent Order
In the Matter of
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In the Matter of the Certificate of Authority of
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05-028
Order of Suspension
In the Matter of the Certificate of Authority of
States General Life Insurance Company

05-029
Order of Continued Suspension
In the Matter of the Certificate of Authority of
Northwestern National Insurance Company

05-030
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In the Matter of the Certificate of Authority of
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05-032
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In the Matter of the Certificate of Authority of
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### LEGISLATIVE AUDIT

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